

HONORABLE EDWARD F. SHEA

THE SCOTT LAW GROUP, P.S.
 Darrell W. Scott, darrellscott@mac.com
 Matthew J. Zuchetto, matthewzuchetto@mac.com
 926 West Sprague Avenue, Suite 680
 Spokane, WA 99201
 Ph: (509) 455-3966

TERRELL MARSHALL & DAUDT PLLC
 Beth E. Terrell, bterrell@tmdlegal.com
 Toby J. Marshall, tmarshall@tmdlegal.com
 Jennifer Rust Murray, jmurray@tmdlegal.com
 936 North 34th Street, Suite 400
 Seattle, WA 98103
 Ph: (206) 816-6603

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON

SHANNON BRONZICH and CATHLEEN)	
FARRIS, individually and on behalf of a)	NO. CV-10-00364-EFS
Class of similarly situated Washington)	
residents,)	<u>CLASS ACTION</u>
)	
Plaintiffs,)	PLAINTIFFS' REPLY IN
)	SUPPORT OF MOTION TO
v.)	SUPPLEMENT PLAINTIFFS'
)	RESPONSE TO DEFENDANTS'
PERSELS & ASSOCIATES, LLC, a)	MOTIONS TO DISMISS
Maryland limited liability company; NEIL J.)	
RUTHER, a Maryland attorney; JIMMY B.)	<u>With Oral Argument</u>
PERSELS, a Maryland attorney; ASCEND)	
ONE CORPORATION, a Maryland)	April 12, 2011 at 1:30 p.m.
corporation; CAREONE SERVICES, INC., a)	Richland, Washington
Maryland corporation; AMERIX)	
CORPORATION, a Maryland corporation;)	
and JOHN DOES 1-5,)	
Defendants.)	

PLAINTIFFS' REPLY TO MOTION TO SUPPLEMENT
 PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTIONS
 TO DISMISS: 1

LAW OFFICES
THE SCOTT LAW GROUP
 A PROFESSIONAL SERVICE CORPORATION
 926 W. SPRAGUE AVENUE
 SUITE 680
 SPOKANE, WA 99201
 (509) 455-3966

1 Plaintiffs respectfully request the Court grant their motion to supplement
 2 because the materials contained therein, specifically the Declaration of Mr. Gusmano
 3 (“Gusmano Decl.”) [Doc. 74-1 and Doc. 80-1 – Ex. A to Motion to Supplement and
 4 Praecipe], provide additional support for the factual allegations in Plaintiffs’ First
 5 Amended Complaint (“FAC”) [Doc. 27], which are amply pled and which Defendants
 6 have failed to address. As explained recently by the Seventh Circuit, it is appropriate
 7 for Plaintiffs to produce this material in response to Defendants’ motions to dismiss:
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10 We conclude that the Supreme Court’s recent decisions,
 11 while raising the bar for what must be included in the
 12 complaint in the first instance, did not eliminate the
 13 plaintiff’s opportunity to suggest facts outside the
 14 pleading, including on appeal, showing that a complaint
 15 should not be dismissed. . . . [O]nce the plaintiff pleads
 16 sufficient factual material to state a plausible claim--that
 17 is, sufficient to put the defendant on notice of a plausible
 18 claim against it--nothing in *Iqbal* or *Twombly* precludes
 19 the plaintiff from later suggesting to the court a set of
 20 facts, consistent with the well-pleaded complaint, that
 21 shows that the complaint should not be dismissed.¹

22 ¹ *Reynolds v. CB Sports Bar, Inc.*, 623 F.3d 1143, 1147 (7th Cir. 2010) (internal
 23 citations omitted); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)
 24 (holding plaintiffs must simply plead sufficient facts to “raise a reasonable expectation
 25 that discovery will reveal evidence” defendants are liable).
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1 Defendants' argument that facts external to the FAC should not be considered is
 2 misplaced. Defendants insist upon additional factual allegations while, at the same
 3 time, Defendants are also attempting to prevent any amendment to the FAC. The
 4 supplemental materials both explain factual allegations already made and constitute
 5 additional facts that could be expressly alleged, if that proves necessary.²
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 8 A principal factual allegation detailed in Plaintiffs' FAC is that Persels &
 9 Associates ("Persels"), Jimmy B. Persels, and Neil J. Ruther serve as a front for the
 10 debt adjusting enterprise of Ascend One, CareOne, and Amerix (the "CareOne
 11 Defendants") and that the CareOne Defendants perform the actual debt adjusting, as
 12 the term is defined by Washington law. *See FAC* ¶¶ 28, 29, 30, 31, 32, 34, 35, 38, 39,
 13

14 ² The case cited by Defendants is inapplicable. It involved additional factual
 15 assertions and allegations made in memoranda, which are not evidence and do not
 16 constitute pleadings. *See Schneider v. California Dep't of Corrections*, 151 F.3d
 17 1194, 1197 n.1 (9th Cir. 1998). Moreover, in *Schneider* the Ninth Circuit held that
 18 leave to amend should have been granted because the complaint "*could* have been
 19 cured by an appropriate amendment." *Id.* at 1197, 1201 (emphasis in original). Here,
 20 Mr. Gusmano's declaration is a signed and sworn legal statement, which provides
 21 additional factual support for Plaintiffs' well-pled complaint and therefore may be
 22 properly considered by the Court.
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1 41, 42, 43, 44, 45. The Gusmano Declaration, in this regard, furnishes support for
2 Plaintiffs' FAC's pre-existing factual allegations in a number of respects.
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4 For example, Mr. Gusmano states that "Ascend One obtained signed retainers
5 for Persels Law Firm from consumers for DRP [debt resolution (settlement) plans]
6 before informing Persels Law Firm that they were in communication with that
7 consumer." Gusmano Decl. at ¶ 10; *see also id.* at ¶ 9 ("In recruiting consumers to
8 purchase DMP [debt management plans] or DRP, Ascend One [employees] . . .
9 attempted to convince the consumer to purchase services."). In the Complaint,
10 Plaintiffs allege that CareOne works as "lead generator" and solicits clients for
11 Defendants' debt settlement programs. FAC ¶¶ 28, 29 and 33.
12

13 Likewise, Mr. Gusmano states that he "became aware that the settlement results
14 of clients were not reported by the settlement negotiators at Ascend One." Gusmano
15 Decl. at ¶ 7. Further, in his capacity as a Persels' employee, Mr. Gusmano "was
16 actively prevented from obtaining [information regarding results of Ascend One
17 settlement negotiators] by Ascend One through a tactic of concealment and
18 misrepresentation." *Id.* ¶ 7. Plaintiffs have alleged that Ascend One performs its debt
19 adjusting activities without the meaningful involvement or supervision of the Persels
20 Defendants. *See FAC* ¶ 41. Mr. Gusmano's Declaration further supports Plaintiffs'
21 pre-existing and detailed factual allegations in the FAC because the Declaration
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1 elucidates how the debt adjusting activities of the CareOne Defendants were not only
2 concealed from a Persels employee (Mr. Gusmano) but also how such debt adjusting
3 activities are indeed performed exclusive of the Persels Defendants.
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5 Defendants' division of activity goes directly to the Plaintiffs' allegations
6 contained in the Complaint. *See FAC* ¶ 59 ("Persels & Associates, Ruther, and
7 Persels failed to disclose to Plaintiffs or Class Members that Ascend One, CareOne
8 and Amerix are in fact independent debt adjusting companies."); *Id.* at ¶ 60 ("Persels
9 & Associates, Ruther, and Persels failed to disclose that the debt settlement services
10 purportedly being performed by Persels & Associates were actually being performed
11 by CareOne, Ascend One and Amerix."). The Declaration of Mr. Gusmano merely
12 provides further support of the facts Plaintiffs have already pled.
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16 Similarly, Plaintiffs allege that Defendants received fees as a result of their debt
17 adjusting services in Washington. *See FAC* ¶ 56 ("In furtherance of Defendants'
18 scheme, Persels & Associates, Ruther, and Persels, split the fees that they collected
19 from Plaintiffs and Class members with non-lawyers Ascend One, CareOne, and
20 Amerix."); *Id.* at ¶ 57 ("Defendants did not disclose the fee splitting or the details of
21 the fee splitting to Plaintiffs or Class members."). Mr. Gusmano's Declaration
22 provides additional support for this allegation because he explains the Defendants
23 actually split fees on a sixty-forty basis and the so-called assistants (the CareOne
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1 Defendants) receive sixty percent (60%) of the fees received from consumers, while
2 the so-called attorney Defendants (the Persels Defendants) take forty percent (40%).
3

4 Gusmano Decl. at ¶¶ 13-16.

5 Finally, Mr. Gusmano states that he personally disclosed the “concealment and
6 misrepresentation of the [debt settlement plans] that were engineered to fail” to Jimmy
7 B. Persels and Neil J. Ruther in July, 2009 and that they nonetheless carried on with
8 the enterprise. Gusmano Decl. at ¶¶ 19, 20. Here, Plaintiffs allege Jimmy B. Persels
9 and Neil J. Ruther, in addition to their personal participation in unfair or deceptive
10 acts and practices, “established, directed, and/or ratified the unfair and deceptive
11 business practices alleged in th[e] Complaint” and that they knew each other’s
12 conduct was unlawful. FAC ¶¶ 8, 9, 48, 81.
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16 In sum, the Gusmano Declaration both provides additional support for and
17 illustration of those allegations already existent in Plaintiffs’ FAC. It is particularly
18 relevant because it provides further support for Plaintiffs’ allegations that the CareOne
19 Defendants retained clients and performed debt adjusting services, as that term is
20 defined in RCW 18.28.010, without the meaningful involvement or supervision of the
21 Persels Defendants. Defendants’ argument that the Gusmano Declaration is
22 irrelevant, therefore, wholly lacks merit.
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1 DATED this 9th day of April, 2011.

2 THE SCOTT LAW GROUP, P.S.

3
4 By: 

5 Darrell W. Scott, WSBA #20241

6 darrellscott@mac.com

7 Matthew J. Zuchetto, WSBA #33404

8 matthewzuchetto@mac.com

9 and

10 TERRELL MARSHALL & DAUDT PLLC

11 Beth E. Terrell, WSBA #26759

12 bterrell@tmdlegal.com

13 Toby J. Marshall, WSBA #32726

14 tmarshall@tmdlegal.com

15 Jennifer Rust Murray, WSBA #36983

16 jmurray@tmdlegal.com

17 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2011, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

Charles Matthew Andersen cma@winstoncashatt.com
clk@winstoncashatt.com

Lawrence Stephen Greenwald lgreenwald@gfrlaw.com


Brian Louis Moffet bmoffet@gfrlaw.com
mnorman@gfrlaw.com

Leonard J. Feldman ljfeldman@stoel.com
cmcastro@stoel.com
sea_docket@stoel.com

Rita V. Latsinova rvlatsinova@ stoel.com
sea_docket@ stoel.com
tabitseff@stoel.com

Stevan David Phillips sdphillips@stoel.com
jswaldschmidt@stoel.com
sea_docket@stoel.com

EXECUTED this 8th day of April 2011, at Spokane, Washington.


SAMANTHA SIMATOS-BAESCHLIN
of The Scott Law Group, P.S.